

1 [COUNSEL LISTED ON NEXT PAGE]  
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5 IN THE UNITED STATES DISTRICT COURT  
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8  
9 SAN FRANCISCO DIVISION

10 ANN ROSS, DENNIS RAMOS, MAURITA ) Case No. C 07-2951 SI  
11 PRASAD, TAMARA BURKHART, NANETTE )  
12 RENEE HOUSKEN, and KELLY SMITH, ) **PARTIES' STIPULATION AND**  
13 individually and on behalf ) **PROPOSED ORDER REGARDING**  
14 of all others similarly situated, ) **DEFENDANT'S MOTION FOR**  
15 Plaintiffs, ) **PARTIAL SUMMARY JUDGMENT RE**  
16 v. ) **THE EIGHTH CAUSE OF ACTION AND**  
17 ) **PLAINTIFF ROSS**  
18 )  
19 ) Date: October 3, 2008  
20 ) Time: 9:00 a.m.  
21 ) Department: 10  
22 U.S. BANK NATIONAL ASSOCIATION, DBA )  
23 DEFENDANT, ) Hon. Susan Illston  
24 Defendant. )  
25 )  
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28 )

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1       1.     Defendant has moved for partial summary judgment to dismiss Plaintiffs' Eighth  
2 Cause of Action, as pled in the Second Amended Complaint. In the Eighth Cause of Action,  
3 Plaintiffs seek so-called "waiting time" penalties, including penalties under California Labor Code  
4 Section 203. Defendant's motion does not address Plaintiffs' claims for waiting time penalties as  
5 a measure of damages should they prevail on their other causes of action, but rather seeks partial  
6 summary judgment as to a stand-alone claim, both as to the Plaintiffs and the class the Plaintiffs  
7 assert. A "stand-alone" claim is one that is based on an allegation that Defendant failed to pay the  
8 Plaintiffs' final paycheck within the time allowed by law and is not merely derivative of other  
9 causes of action in the Second Amended Complaint.

10       2.     The parties have conferred in an attempt to resolve the above motion with respect  
11 to Plaintiff Ann Ross.

12       3.     The parties stipulate that Defendant U.S. Bank National Association paid Plaintiff  
13 Ross a final paycheck within the time allowed by California Labor Code Sections 201 to 203 and  
14 that therefore Plaintiff Ross is not entitled to a stand-alone waiting time penalty under Section  
15 203.

16       4.     Plaintiff Ross does not agree that her final paycheck included all wages that she  
17 may be owed under the other causes of action. The parties further stipulate that Plaintiff Ross  
18 retains the right to attempt to prove, and Defendant retains the right to contest, that Ross is entitled  
19 to a derivative Section 203 penalty as a measure of damages if she prevails on other causes of  
20 action that entitle her to additional wages.

21       5.     The parties further stipulate that Plaintiff Ross lacks standing to be a class  
22 representative for any class of former employees asserting a stand alone waiting time penalty  
23 claim, as defined above.

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2 6. The parties stipulate that the Court should grant Defendant's motion for partial  
3 summary judgment for Plaintiff Ross's claim under the Eighth Cause of Action as stated below.

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5 DATED this 12th day of September 2008.

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7 BAILEY PINNEY, PC

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9 By: /s/ Jose R. Mata  
Jose R. Mata

10

11 Attorneys for Plaintiffs  
ROSS, RAMOS, PRASAD, BURKHART,  
HOUSKEN, and SMITH

12

13 DAVIS WRIGHT TREMAINE LLP

14

15 By: /s/ Judith Droz Keyes  
Judith Droz Keyes

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17 Attorneys for Defendant  
18 U.S. BANK NATIONAL ASSOCIATION

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1 ORDER  
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3 PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS ORDERED that Defendant's  
4 motion for partial summary judgment on Plaintiffs' Eighth Cause of Action as to Plaintiff Ann  
5 Ross is granted as follows:  
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7 1. The Court finds that Plaintiff Ross was paid her final paycheck within the time allowed by  
8 California Labor Code Sections 201 to 203 and therefore, she does not have a stand-alone waiting-  
9 time penalty claim. The Court therefore dismisses the Eighth Cause of Action in the Second  
10 Amended Complaint as to Plaintiff Ross.  
11  
12 2. Nothing in this Order affects any right Plaintiff Ross may have to assert, or any right  
13 Defendant has to contest, either that Ross's final paycheck did not include all wages due to her  
14 under other causes of action in the Second Amended Complaint or that as a remedy she is entitled  
15 to seek a derivative California Labor Code Section 203 penalty.  
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17 3. The Court finds that Plaintiff Ross lacks standing to be a class representative for any class  
18 of former employees asserting a claim under the Eighth Cause of Action in the Second Amended  
19 Complaint, that is, a stand-alone waiting time penalty claim.  
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21 4. This Order does not affect the other named plaintiffs or putative class members. The  
22 remainder of Defendant's motion for partial summary judgment on Plaintiffs' Eighth Cause of  
23 Action shall be addressed by a separate order.  
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Dated: September \_\_\_, 2008

By

  
Susan Illson  
UNITED STATES DISTRICT JUDGE